



STATE BOARD OF EQUALIZATION

March 24, 1952

[X]

Attention: [X]

Gentlemen:

This is in answer to your letter of February 28 concerning the application of the sales tax with respect to your sales of oils used for greasing baked goods pans.

You state that your San Francisco representatives have informed you of a new ruling issued on February 6, 1952, to the Northern California Bakers Association. We are not aware of any "new ruling" that has been issued, nor are we able to find in our records any letter or other indication of any written statement or opinion concerning this subject bearing the date indicated or any approximate date.

Our position is the same as that which you were apparently given by Mr. Rose of our Los Angeles Office to the effect that the tax does not apply to sales of oils with a vegetable oil or lard base where these oils are ultimately consumed by humans as an ingredient of bread or other bakery products. This is upon the basis that these products fall within the definition of food products for human consumption set forth in Section 6359 of the Sales and Use Tax Law and are ultimately consumed by humans as an ingredient of the bread or other bakery products. On the other hand, the tax, in our opinion, applies with respect to the sale of mineral oil or oil with mineral oil base used for greasing pans or as divider oil, even though it may find its way into the bakery products. The basis for this opinion is that the product is not within the definition of food products for human consumption and is definitely purchased for some reason other than resale.

You inquire concerning the application of the tax to sales of pan oils or greases consisting of a mixture of equal parts of mineral oil and vegetable oil with beeswax, a mixture of all vegetable oils with beeswax and other material not edible, and a mixture of lard, lard oil containing mineral oil or vegetable oil with or without beeswax or other inedible materials. It is our opinion that these mixtures containing beeswax, mineral oil, or other ingredients not within the definition of food products cannot be regarded as food products for human consumption for purposes of the sales tax. Therefore, the sale of these mixtures for use as pan grease, divider oil, and the like, are taxable retail sales.

You inquire concerning the securing of a refund of sales tax paid with respect to sales made prior to February 6, 1951. You may file a refund claim with respect to your sales of oils with a vegetable or lard base not containing ingredients preventing the product from being considered a food product for human consumption with respect to any sales made by you since January 1, 1949. The Sales and Use Tax Law requires that claims for refund be filed within three years from the last day of the month following the close of the quarterly period for which the overpayments were made. Thus, a claim filed on or before April 30, 1952, may include the first quarter of 1949 and subsequent quarters. To file a refund claim it is merely necessary to address a letter to this Board setting forth the amount of the claim and the grounds upon which it is based.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:ph